Assistant Commercial Taxes Officer vs. M/s Chand & Company, Bikaner.

SB Civil Sales Tax Revision Petition No.702/1999

Date of Order: 24th May, 2006.

PRESENT

HON'BLE MR.JUSTICE BHAGWATI PRASAD

Mr.Sangeet Lodha for the petitioner.
Mr.Suresh Ojha for the respondent.

Reportable-

This revision petition is filed by the Officers of the Revenue impugning the order of the Rajasthan Tax Board.

The facts giving rise to the present case are that on 22.05.97 a truck was intercepted and checked by the Officers of the Commercial Taxes Department which was coming from Delhi to Bikaner. It had a load of 112 slabs of wood. On being intercepted it was demanded that documents of the consignment be given to the Officer concerned. The driver of the truck informed that except Bill No.6508 dated 231.05.97 he had no other document. He also submitted that he has no other document in his possession which he

has to show. His statement was recorded which has been filed as Ex.1. On the basis of the aforesaid submissions the truck was detained under section 78 (4) (a) of the Rajasthan Sales Tax Act 1994 (hereinafter referred to as 'the Act of 1994').

On 23.05.97 Shri Vijay Chandak, Manager of the firm M/s Chandak & Company, Rani Bazar, Bikaner appeared. A notice was issued under section 78 of 'the Act of 1994' for appearing on 30.05.97. The manager of the firm Vijay Chandak who appeared on 23.05.97 prayed that the matter be decided today itself. He in his reply submitted that along with the goods bill, bilty and Form No. ST 18 A was also there but it was with another driver who had got down on way and who has arrived at Rajgarh subsequently and he has produced Form No.ST 18A 336675.

The assessing officer recorded that he has considered the case of the assessee. At the time when the consignment was checked there was no other driver other than the one whose statement has been recorded . He had not expressed at that time that there was any other driver on the truck. Not only this that presence of other driver was not stated it was also not mentioned that Form No. ST 18A has remained with some one else. Rather it was not even

referred. There is no reference of Form No. ST 18A either in the bill or bilty. The driver of the vehicle has also not mentioned the fact that Form No.ST 18 A has remained with another driver. The contemporaneous documents, bill, bilty and the statement of the driver Balkishan do not make a mention of the existence of Form ST 18A.

The assessing authority recorded that non submission of Form ST 18A at the time of checking is violation of the provisions of Section 78(2) of the Act of 1994 and Rule 53 of the Rajasthan Sales Tax Rules , 1995 (hereinafter referred to as 'the Rules of 1995') and, therefore, a penalty at the rate of 30% was imposed . The goods being of Rs.1,12,200/- the amount of penalty was quantified as Rs.33,660/-

Against the imposition of penalty an appeal was preferred by the assessee. In appeal, certain affidavits were filed. The appellate authority found that there is contradiction in the reply submitted by Shri Vijay Chandak and the affidavits so much so that in one of the affidavit it was stated that Shri Ghanshyam s/o Shri Gumaniram , r/o village Balasar, District Jayal was the other driver. In fact in Rajasthan there is no district as Jayal. Therefore, it was

only an afterthought and in retrospect a story was cooked up and, on that issue, the story of the assessee was not accepted to be true, and the appeal was rejected.

The assessee filed an appeal before the Rajasthan Tax Board and the learned Tax Board concluded that on the basis of the imposition of penalty it has been found that with a notified article it was necessary that it should have been accompanied by Form ST 18A. . Form ST 18 A was not found with that. But according to the Tax Board Form ST 18A was with the goods but the driver who had the documents had got down in between and on 23.05.97 Form ST 18 A was filed. It was shown in the reply that the form had been taken from th other driver and filed. The tribunal was of the opinion that no enquiry has been held about the intent of avoiding tax and it has not been concluded that the whole story is with the intention of avoiding tax. Since form ST 18A has been filed next day it is not accepted that it was a cooked up story. Simply because the driver Balkishan who was person incharge of the consignment had not disclosed that there was another driver, penalty cannot be imposed because it has not been enquired and found that there was intention to evade tax and , therefore, penalty was set aside.

The learned counsel for the revenue urged that the approach of the tax board has been erroneous. As far as the Scheme of the Act goes , requirement under section 78 (2) of the Act of 1994 are that the documents should be accompanied with the consignment. For ready reference Section 78 is quoted herein below:-

> "78. **Establishment of check-post and inspection of goods while in movement:-**
> (1) .....
>
> (2) The driver or the person incharge of a vehicle or carrier or of goods in movement shall -
> (a) carry with him a goods vehicle record including "challans" and "bilties", bills of sale or despatch memos and prescribed declaration forms ;
> (b) stop the vehicle or carrier at every check-post set up under sub-section (1) ;
> (c)produce all the documents including prescribed declaration forms relating to the goods before the Incharge of the check-post ;
> (d) give all the information in his possession relating to the goods ; and
> (e) allow the inspection of the goods by the Incharge of the check-post or any other person authorized by such Incharge.
> Explanation : For the purposes of this chapter -
> (i) "vehicle or carrier" shall include any means of

transportation including an animal to carry goods from one point to another point ;

(ii) “goods” shall include animals also; and

(iii) “goods in movement” shall mean -

(a) the goods which are in the possession or control of a transporting agency or person or other such bailee ;

(b) the goods which are being carried in a vehcle or carrier belonging to the owner of such goods ; and

(c) the goods which are being carried by a person. ”

(3) .....

(4) .....

(5) The Incharge of the check-post or the officer empowered under sub-section (3), after having given the person incharge of the goods a reasonable opportunity of being heard and after having held such enquiry as he may deem fit, shall impose on him for possession or movement of goods, whether seized or not, in violation of the provisions of clause (a) of sub-section (2) or for submission of false or forged documents or declaration, [a penalty equal to thirty percent of the value of such goods].

(6). .....

(7) .....

(8) ..... "

The learned counsel for the revenue has urged that check

post was established by the State of Rajasthan for checking the evasion of tax under Section 78 of the Act of 1994. Driver or the person incharge of the vehicle or carrier of the goods in movement is required to carry with him all the records pertaining to the consignment, i.e. Bills, bilties bills of sale or dispatch memo and prescribed declaration forms. These requirements are mandatory. An officer empowered under section 78 (3) of the Act of 1994 can detain or seize the goods in movement if they are found without documents. Violation of provisions of Section 78(2) of the Act of 1994 entails a penalty under section 78 (5) of the Act of 1994. The learned counsel for the revenue further urged that a Division Bench of this Court in the case of M/s Lalji Mulji Transport Company vs. State of Rajasthan reported in [(2002) 127 STC 365] has held :-

> "13. From the above discussion, it clearly emerges that section 78 of the Act has been enacted with a view to check evasion of tax by transporters who are found carrying goods with fake bilties, in-complete documents and under suspicious names. The constitutional validity of such provisions has been upheld by the various decisions of the apex Court. It is now realised that unless an element of fear is introduced in so far as is necessary and unless the consequence of breach turns into penalty of sufficiently effective measures, there shall be no real

method of ensuring compliance. It will not be correct to protect a tax evader saying that there is absence of *mens rea.* The apex Court in D.P. Metals case [2001] 124 STC 611, has rejected the submissions regarding absence of *mens rea* by observing that the submission of false or forged documents or declaration at the check-post or even thereafter can safely be presumed to have been motivated by desire to mislead the authorities. The court further observed that hiding the truth and tendering falsehood would per se show existence of *mens rea* , even if required. On the question of *mens rea* , our view that it has no application in fiscal statute is fortified by decision of the Supreme Court in R.S. Joshi, Sales Tax Officer v. Ajit Mills reported in [1977] 40 497; AIR 1977 SC 2279. It is settled law that provisions to check evasion of sales tax are within the legislative competence of the State Legislature under entry 54 of List II of the Seventh Schedule to the Constitution of India. Thus, the provisions to make imposition of tax efficacious or to prevent evasion thereof, are within the legislative competence of the State Legislature. Thus, the plain and simple scheme of Section 78 is that the vehicle passing through the State of Rajasthan carrying goods to be delivered in another State and carries the documents as referred in section 78(2) and produces at the check post or anywhere else where a person authorized ask him to do so, if it is done honestly and faithfully, there is absolutely no problem. However, if a transporter or a trader is entering into an adventurism with a view to

evade tax, he must be ready to face the consequence of penalty at the rate of 30 per cent, seizure of vehicle and in aggravated case, the confiscation of the vehicle. The provisions cannot be said to be arbitrary, as they provide full opportunity of hearing to the parties affected. The Sales Tax Act also provides provisions of appeal and review. The requirement of the laws is meant to be strictly construed particularly in the areas of evasion of tax. We cannot lose sight of the fact that often there are attempts to avoid statutory obligation or requirement for oblique reason. An undue indulgence and leniency in favour of the tax evaders on technical or misplaced sympathetic ground leads to serious consequences affecting the revenue and, as such, development and security of the State. We are not oblivious of the fact that the penalty provisions cannot be used as a revenue yielding provision. The object of the penalty provisions is to ensure compliance in the larger public interest. We are also conscious of the fact that in such a situation, a trader or the transporter is also not unnecessarily harassed. If, in a given case, it is found that the provision has been misused by the authority, sufficient safeguards are provided under the statute and the Constitution. But a statutory provision cannot be struck down only on apprehensions or hypothetical grounds. Thus, we hold the entire provisions of Section 7 of the Act intra vires of the Constitution."

The learned counsel for the revenue further stressed that under section 78(2) of the Act of 1994 it is the obligation of the person incharge of the vehicle to carry the prescribed declaration form with the goods in transit. Section 81 of the Act of 1994 provides that any registered dealer or any other person who intends to import or bring or otherwise receives any goods from outside the State for sale, use, consumption or for other disposal in the State, shall unless otherwise prescribed, obtain a prescribed declaration form from the prescribed authority and shall cause it to be carried with the goods as part of the documents specified in sub-section (2) of Section 78 and produce along with other documents before the Incharge of the entry check-post of the State.

According to the learned counsel for the revenue, provisions of Section 81 of the Act of 1994 , read with Section 78 (2) of the Act of 1994 unequivocally prescribe that declaration forms should be accompanied with the goods in transit and such requirement is mandatory. The State Government has framed rules in this regard and rule 53 and 54 of the Rules of 1995 also require that goods in movement for import within the State should carry along with it the required declaration. The declaration ST.18A is required to be kept completely filled in all respect in ink, that is not even

prescribed with it that it can be filled with any other writing instrument . There is a counter foil of the form which is required to be retained by the dealer on portion marked as ' original ' ' Duplicate' which is required to be carried with the goods in movement during their movement from a particular premise to the place of business. As and when such goods are checked in the possession of the agent of the dealer or dealer himself the requirement of carrying the declaration ST 18 A is imperative. This is an obligation cast on the driver or the person incharge of a vehicle or carrier or of goods in movement to carry the forms. As and when an incident takes place under sub-section (3) of Section 78 of the Act of 1994 the original form of the declaration form is retained by the inspecting authority and the duplicate portion after certain verification is returned to the person producing the same. The returned original portion of the declaration form is sent to the assessing authority of the registered dealer or to the authority who issued the declaration form. Dealer would file form ST 18A duplicate portion along with the tax return.

Thus in the scheme of the Act of 1994 the declaration ST 18A is a guarantee to see that the dealer concerned pays the tax on the import of the goods which have been brought within the territory of the State of Rajasthan. Requirement of carrying Form ST 18A is

to provide a mechanism to the State Government authorities to put a check on the transaction which takes place. Absence of such declaration raises a presumption of the attempt of evasion . The presence of ST 18A along with the consignment is the process by virtue of which State keeps a track on the taxable items and its absence has been made culpable under sub-section (2) of Section 78 and sub-section (5) of the Act of 1994.

The learned counsel , assailing the finding of the Tax Board has submitted that the concept of guilty intent to be enquired into has been wrongly imported by the Tax Board. *Mens rea* is a concept of criminal law which has since long lost its importance. Even certain statutes of criminal liability do not require *mens rea* being the essential ingredients. The learned counsel for the revenue emphasised that under the Motor Vehicles Act and Rules a driver is required to carry all the papers along with him. If the documents are not found at the time of checking the vehicle is challaned though there may not be a *mens rea* in not keeping the documents. A wrong parking which is punishable in the 'no parking zone' is not always associated with any guilty intent . A marriage in violation of the Child Marriage Restraint Act cannot be brought within the mischief of *mens rea* but still has been made punishable. Smoking at public

places has been made an offence without there being any *mens rea*. Thus, with the development of law such acts which are punishable are without the requirement of *mens rea* being there. Thus, *mens rea* in present day scenario is not an essential ingredient of all culpabilities.

Learned counsel for the revenue further submitted that *mens rea* is a concept which inheres into it a guilty intent and guilty mind which translates into an intent of committing crime forming motive or crime. Proof of motive is not considered an essential ingredient in criminal jurisprudence. It has not been considered mandatory because the courts have been holding that motive lies hidden in the mind of culprit. Therefore, presence and establishment of the fact of motive by prosecution has not been insisted upon by the criminal courts. It is not an easy exercise to establish an act of criminal intent for the prosecution. This has to be seen from the circumvening circumstances and it is often said that intention is what the intention does. The ultimate act is to be viewed in over all circumstances and then necessary inference is drawn.

The Hon'ble Supreme Court in a recent decision in the matter of India Agencies (Regd.) vs. Addl.Commissioner of

Commercial Taxes, Bangalore (2005 (2) SCC 129) has held that provision for furnishing original Form C to claim concessional rate of tax is the requirement of the provisions of Central Sales Tax Act 1956 and has observed as follows:-

> "We also realize that the section and the rules as they stand may conceivably cause hardship to an honest dealer. He may have lost the declaration forms by pure accident and yet he will be penalized for something for which he is not responsible but it is for the legislature or for the rule-making authority to intervene to soften the rigour of the provisions and it is not for this Court to do so where the provisions are clear, categoric and unambiguous."

The contingencies of losing and misplacing were seen by the Hon'ble Supreme Court in this case but then the Hon'ble Supreme Court was pleased to observe that the requirement of law is unambiguous and that requires to be followed. It is for the legislature to take any remedial acts and not for the courts. The learned counsel for the revenue has asserted that here the Tax Board has tried to do what has been left by the Hon'ble Supreme Court to be done by the legislature. The learned counsel has further stressed that emphasis of the Tax Board on looking for the criminal intent is

misplaced.

Per contra, the learned counsel for the assessee has laid down emphasis on the question of mensrea to a great extent. He has submitted that a Division Bench of this Court in M/s Parasnath Granite India Ltd. vs. State of Rajasthan & Anr. [2004] 18 Sales Tax Today , 145 has discussed all the relevant cases and has held that unless the *mens rea* is established the penalty is not automatic.

I have heard learned counsel for the parties and have given my thoughtful consideration to the arguments advanced.

The first and foremost consideration before this Court is that the Division Bench judgment in M/s Parasnath's case (supra) being a Division Bench judgment has been put as the prime defence by the respondents. To meet this argument the respondent has relied on a Division Bench decision of this Court in the matter of Lalji Mulji's case (supra). In this case the Division Bench of this Court has held that the conception of *mens rea* has no application in the implementation of fiscal statute. This has been held by the Division Bench of this Court on the strength of the decision of the Hon'ble Supreme Court in the matter of R.S.Joshi vs. Ajit Mills (AIR

1977 SC 2276). The Division Bench in Parasnath's case (supra) has tried to distinguish with R.S.Joshi's case (supra).

With respect to the Division Bench , the explanation given with regard to the case of R.S.Joshi runs contrary to the meaning given by the Division bench in Lalji Mulji's case (supra) and also another Division Bench decision of this Court in the matter of M/s Maharana Talkies , Bhilwara vs. State of Rajasthan & Ors. reported in[2004] 19 Sales Tax Today, 237. This court has negated the concept of *mens rea* being available in the matters when the taxation statutes are in question. It would be relevant here to quote from the Division Bench judgment of this Court in Parasnath's case (supra) that this Court had observed :

> "However, in the context of penalty for breach of statutory obligations, not amounting to offence, *mens rea* in the aforesaid technical sense in most cases may not be necessarily recognized before penalty is imposed. But the term has been used to draw distinction between honest and bonafide conduct in breach of statutory obligation on the one hand and dishonest and contumacious conduct on the other. The principle is invoked in cases where before levy of penalty an enquiry into probable defence is to be held by envisaging any

> opportunity of hearing by issue of show cause notice even in cases where breach is complete. In some cases, penal consequences follow in absolute terms on principle of strict liability, such as penalty is considered compensatory for loss caused to revenue or a token or light penalty is provided commensurating with the nature of breach, where such distinction may not be present. It ultimately depends on the consideration of scheme of relevant Statute, its object and machinery provisions to implement it."

Thus it is clear that the Division Bench in Parasnath's case (supra) was conscious that is not a necessarily recognisable ingredient and the conduct is required to be looked into and this has been so said in the light that unless principles of absolute liability is discernibly clear from the object of the provisions the conduct of the party becomes relevant. It has further been held in Parasnath's case (supra) :

> "Thus, in our opinion, the decision of Supreme Court in Ajit Mill's case and D.P. Metals case and the Bench decision of this Court in Lalji Mulji case do not militate against the decision rendered by this Court in Mahaveer Conductor's case or the Jitendra's case, or the Voltas case and a host of other cases. On the contrary, these two judgments reaffirm the view expressed in the aforesaid

> decisions that the levying penalty is not automatic, and there is distinction between honest and dishonest acts."

The purport of the Lalji Mulji's case (supra) has been accepted by the Division Bench. If the aforesaid observations of the of the Division Bench in Parasnath's case (supra) is considered then it appears that the court had approved the Lalji Mulji concept of negating the aspect of *mens rea* in strictest possible terms when it is not applicable in the fiscal statutes. Thus, this Court feels that Parasnath having followed Lalji Mulji concept, Lalji Mulji's concept has to be given weightage over Parasnath for ultimate conclusion.

Apart from the controversy being seen from the aforesaid point of view, it is relevant to take note of the recent Supreme Court decisions. The Hon'ble Supreme Court in State of U.P. & Ors. vs. Sukhpal Singh Bal (2005) 7 SCC , 615 has observed:-

> "15. In the light of the above judgments as applicable to the provisions of the said 1997 Act, we are of the view that the High Court had erred in striking down Section 10(3) as ultra vires Articles 14 and 19(1)(g) of the Constitution. "Penalty" is a slippery word and it has to be

understood in the contest in which it is used in a given statute. A penalty may be the subject matter of a breach of statutory duty or it may be the subject matter of a complaint. In ordinary parlance, the proceedings may cover penalties for avoidance of civil liabilities which do not constitute offences against the State This distinction is responsible for any enactment intended to protect public revenue. Thus, all penalties do not flow from an offence as is commonly understood but all offences lead to penalty. Whereas the former is a penalty which flows from a disregard of statutory provisions, the latter is entailed where there is *mens rea* and is made the subject matter of adjudication. In our view, penalty under Section 10(3) of the Act is compensatory. It is levied for breach of a statutory duty for non-payment of tax under the Act. Section 10(3) is enacted to protect public revenue. It is enacted as a deterrent for tax evasion. If the statutory dues of the State are paid, there is no question of imposition of heavy penalty. Everything which is incidental to the main purpose of a power is contained within the power itself. The power to impose penalty is for the purpose of vindicating the main power which is conferred by the statute in question. Deterrence is the main theme or object behind the imposition of penalty under Section 10(3).”

Reference here may also be made to the findings of the Hon'ble Supreme Court in the matter of Director of Enforcement in

vs.M/s MCTM Corporation Pvt.Ltd. (AIR 1996 SC 1100) :-

7."*Mens rea*" is a state of mind. Under the criminal law, *mens rea* is considered as the "guilty intention" and unless it is found that the "accused" had the guilty intention to commit the "crime" he cannot be held "guilty of committing the crime. An "offence" under Criminal Procedure Code and the General Clauses Act, 1897 is defined as any act or omission "made punishable by any law for the time being in force". The proceedings u/s 23(1) (a) FERA, 1947 are "adjudicatory" in nature and character and are not `criminal proceedings'. The officers of Enforcement Directorate and other administrative authorities are expressly empowered by the Act to `adjudicate' only. Indeed they, have to act "judicially" and follow the rules of natural justice to the extent applicable but, they are not `Judges' of the "Criminal Courts" trying an `accused' for commission of an offence as understood in the general context. They perform quasi-judicial functions and do not act as "Courts" but only as `Administrators' and `adjudicators' . In the proceedings before them they do not try "an accused" for commission of "any crime" (not merely an offence) but determine the liability of the contravenor for the breach of his "obligations" imposed under the Act. They imposed penalty for the breach of the civil obligations laid down under the Act and not impose any "sentence" for the commission of an offence. The expression "penalty" is a word of wide significance.

Sometime, it means recovery of a amount as a penal measure even in civil proceedings. An exaction which is not compensator in character is also termed as a penalty'. When penalty is imposed by an adjudicating officer, it is done so in `adjudicatory proceedings' and not by way of fine as a result of "prosecution" of an `accused' for commission of an "offence" in a criminal Court. Therefore, merely, because penalty clause exists in Section 23(1)(a), the nature of the proceedings under that Section is not changed from `adjudicatory' to `criminal' prosecution. An order made by an adjudicating authority under the Act is not that of conviction but of determination of the breach of the civil obligation by the offender.

8. It is true the breach of a "civil obligation" which attracts "penalty" under Section 23(1)(a) FERA, 1947 and a finding that the delinquent has contravened the provisions of Section 10 FERA, 1947 would immediately attract the levy of `penalty' under Section 23 irrespective of the fact whether the contravention was made by the defaulter with any "guilty intention" or not. Therefore, unlike in a criminal case, where it is essential for the "prosecution" to establish that the "accused" had the necessary *guilty intention* or in other words, the requisite `*mens rea*' to commit the alleged offence with which he is charged before recording his conviction, the obligation on the part of the Directorate of Enforcement, in cases of contravention of the provisions of Section 10 of FERA, would be discharged where it is shown that the "blameworthy conduct" of the

delinquent had been established by willful contravention by him of the provisions of Section 10, FERA, 1947. It is the delinquency of the defaulter itself which establishes its "blameworthy" conduct, attracting the provisions of Section 23(1)(a) of FERA, 1947 without any further proof of the existence of "*mens rea*". Even after an adjudication by the authorities and levy of penalty under Section 23(1)(a) of FERA, 1947, the defaulter can still be tried and punished for the commission of an offence under the penal law, where the act of the defaulter also amounts to an offence the penal law and the bar under Article 20(2) of the Constitution of India in such a case would not be attracted. The failure to pay the penalty by itself attracts "prosecution" under Section 23F and on conviction by the "court" for the said offence, imprisonment may follow."

The Hon'ble Supreme Court has recognised the concept of penalty to protect the public revenue. In the instant case it is to be seen in the light of the statutory provisions which is relevant: -

"78. Establishment of check-post and inspection of goods while in movement -

(1).....

(2).....

(3) .....

(4) .....

> (5) The Incharge of the check-post or the officer empowered under sub-section (3), after having given the person incharge of the goods a reasonable opportunity of being heard and after having held such enquiry as he may deem fit, shall impose on him for possession or movement of goods, whether seized or not, in violation of the provisions of clause (a) of sub-section (2) or for submission of false or forged documents or declaration, [a penalty equal to thirty percent of the value of such goods].
>
> (6) ....."

The penal provisions are contained in the sub-sections of Section 78 of the Act of 1994 and it lays emphasis that a reasonable opportunity after holding enquiry as may be deemed fit if it is found -

(1) that provisions of clause (a) of subsection (2) has been violated,

(2) false documents have been submitted,

(3) forged documents or declaration has been filed,

then penalty is to be imposed.

Thus, it will be seen that enquiry and reasonable opportunity which is required to be given is for determining the above three factors whether there is a violation as contemplated in sub-section 2 (a) of Section 78 of the Act of 1994. Whether a

violation is there or not is a question of adjudication. It is not automatic that violation is presumed. Sub-section (2) (a) requires that as and when a consignment is carried it should in its movement carry with it the challans, bilties, bills of sales and despatch memos in the prescribed declaration form. This is a statutory requirement. Whether such documents were carried or not along with the goods is a matter of enquiry. The matter of enquiry thus, does not travel beyond judging whether the documents were produced on demand. Later production of those documents would not in any way guarantee that they were in faithful compliance of sub-section (2) of Section 78 of the Act of 1994. If the faithful compliance of this provision is not there then in law the enquiry would be limited to see only that aspect of the matter. Other aspects which could be looked into at the enquiry are whether the documents filed are false, forged or the declaration which has been submitted is either false or forged. Beyond this, the scope of enquiry cannot be seen in the scheme of Section 78 of the Act of 1994.

The aforesaid discussion is in conformity with the law as has been laid down by the Hon'ble Supreme Court in the matter of India Agencies 's case (supra):-

"25. The learned Senior Counsel of the appellant submitted that there is no suggestion anywhere that there is anything wrong with the genuineness of the transaction or nay doubts as to the possession by the purchasing dealer of a certificate enabling the sellers to obtain the concessional rate of tax under Section 8 of the Act. Under such circumstances, the authorities should not have taken a strict view in rejecting the claim of the concessional rate of tax. At first sight, the argument of the learned counsel for the appellant appears to be genuine and acceptable but considering the mandatory nature of the provisions of the Act and Rules, this Court is called upon to decide the question involved in this case. The provisions being mandatory they should have been complied with. The appellant made no attempt to comply with Rule 12(3) till after his claim was rejected by the assessing authority. Having made no attempt to comply with the mandatory provisions, he dis entitled himself from getting the concessional rate. Even otherwise, in our view, it is a pure question of law as to the proper interpretation of the provisions of Section 8 of the Central Sales Act and the provisions of Rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957 and Rules 6(b)(ii) of the Central Sales Tax (Karnataka) Rules, 1957. In view of the decision of this Court in the case of Kedarnath Jute Mfg. Co. and of the decision in Delhi Automobiles (P) Ltd, it is clear that these provisions have to be strictly construed and that unless there is strict compliance with the provisions of

the statute, the assessee was not entitled to the concessional rate of tax.

26. We are of the opinion that a liberal construction was not justified having regard to the scheme of the Act and the Rules in this regard and if there was any hardship, it was for the legislature to take appropriate action to make suitable provisions in that regard. It is also settled rule of interpretation that where the statute is penal in character, it must be strictly construed and followed.

27. We also realize that the section and the rules as they stand may conceivably cause hardship to an honest dealer. He may have lost the declaration forms by pure accident and yet he will be penalized for something for which he is not responsible but it is for the legislature or for the rule-making authority to intervene to soften the rigour of the provisions and it is not for this Court to do so where the provisions are clear, categoric and unambiguous."

In this case it is recognised that the production of Photostat copy of counter foil at the time when the same was asked for was not a strict compliance but it was not even a substantial compliance. The requirements of the Act and Rules have not been complied with. The Court has discussed that such production is to

prevent fraud and collusion in an attempt to evade tax and has quoted the approved observations of the Hon'ble Supreme Court in Kedar Nath Jute Manufacturing Co. report in AIR 1966 SC, 12:-

> "10. There is an understandable reason for the stringency of the provisions . The object of Section 5(2)(a)(ii) of the Act and the rules made thereunder is self-evident. While they are obviously intended to give exemption to a dealer in respect of sales to registered dealers of specified classes of goods, it seeks also to prevent fraud and collusion in an attempt to evade tax. In the nature of things, in view of innumerable transactions that may be entered into between dealers, it will well nigh be impossible for the taxing authorities to ascertain in each case whether the dealer has sold the specified goods to another for the purposes mentioned in the section. Therefore, presumably to achieve the two-fold object, namely, prevention of fraud and facilitating administrative efficiency, the exemption given is made subject to a condition that the person claiming the exemption shall furnish a declaration form in the manner prescribed under the section. The liberal construction suggested will facilitate the commission of fraud and introduce administrative inconveniences, both of which the provision of the said clause seek to avoid."

The Court has further recognised the purposes of transcribing the filling of C form , a form relevant for that case for

avoiding suppression of facts of sale.

In the instant case Form ST 18A if filled in once then it is a guarantee of bringing in to the notice of the taxation authorities a transaction. If the same is not filled in and provided to the authorities at the time of checking then the subsequent production only acts as a camouflage and destroys the very purpose of Section 78 (2) and (5) of the Act of 1994 . Thus, non production of the form ST 18A at the time when it was required to, itself show an intent to avoid tax. Once it is seen that there is non compliance of law it would facilitate an attempt of evasion of tax. Rule 53 shows in greater detail use of ST 18 A . If there is no checking and form is not used for the transaction the revenue has no other mechanism to ensure taxation. Thus carrying of the form ST 18 A is imperative along with consignment.

An argument has been advanced that as and when such evasion is seen nexus in between the failure to produce the documents an evasion of tax should be established. In the scheme of things when the law requires production of documents then non-production by itself gives a leverage by law to the revenue to presume and in the light of the decisions of the Hon'ble Supreme

Court as quoted herein above and the Division Bench decisions of this Court in Lalji Mulji and Maharana Talkies ' cases (supra), this court is of the opinion that law as stated by the Hon'ble Supreme Court will have precedence over any other proposition set out in any other judgment.

In that view of the matter, if the facts of the case are examined then we see that the driver of the truck has failed to produce the documents. It was submitted subsequently when enquiry was held. The alleged second driver said to be resident of District Jayal Rajasthan is a patent falsehood. If on 22nd May1997 before the checking took place he had disembarked from the truck to attend a marriage then on 23rd of May 1997 he could not have produced the documents. No facts have been brought before the assessing authority in that regard. There is no contemporaneous evidence to establish the contents of the affidavits which were filed subsequently. On the face of it it was an attempt to evade tax and only a story was made up subsequently. These facts are noticed only to show that as and when documents are not produced when demanded, there is always a possibility that it was withheld for ulterior motive and object.

As per the Scheme of the Act of 1994 goes, non production of documents at the time of inspection under Section 78 (2) attracts the penalty under Section 78 (5) of the Act of 1994. This being a civil liability, only adjudication takes place to levy the penalty. Enquiry is limited to ascertain whether there was violation as referred in the Statute. There is no scope for determining guilty intent.

Point of laws as raised by the revenue are held in favour of the petitioner.

(i) Whether a dealer can be absolved from the liability of penalty u/s. 78 of the Act of 1994 notwithstanding the fact that admittedly he was not carrying the requisite documents as per the provisions contained in Section 78 of the Act of 1994 read with Rule 53 of the Rules of 1995 while the goods were in transit ? The question answered in following terms,-

A dealer cannot be absolved from liability when he is not carrying requisite documents as required under Section 78 of the Act of 1994.

(ii) Whether the *mens rea* to evade the tax on the part of the dealer is a condition precedent to attract the provisions of penalty contained in Section 78 of the Act of 1994 ? The question answered in following terms,-

Mens rea cannot be considered to be a condition precednet for invoking penal provisions as contained in Section 78 of the Act of 1994.

In the result, the revision petition is allowed. The order of the assessing authority , as confirmed by the appellate authority, is restored and the order of the Tax Board is set aside.

(BHAGWATI PRASAD), J.

L.George